

62A-4a-1009. Notice and opportunity to challenge supported finding in Management Information System -- Right of judicial review.

(1) (a) Except as provided in Subsection (2), the division shall send a notice of agency action to a person with respect to whom the division makes a supported finding. In addition, if the alleged perpetrator is under the age of 18, the division shall:

(i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

(ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that lives at a different address, unless there is good cause, as defined by rule, for not sending a notice to a parent or guardian.

(b) Nothing in this section may be construed as affecting:

(i) the manner in which the division conducts an investigation; or

(ii) the use or effect, in any other setting, of a supported finding by the division at the completion of an investigation for any purpose other than for notification under Subsection (1) (a).

(2) Subsection (1) does not apply to a person who has been served with notice under Subsection 62A-4a-1005(1)(a).

(3) The notice described in Subsection (1) shall state:

(a) that the division has conducted an investigation regarding alleged abuse, neglect, or dependency;

(b) that the division has made a supported finding of abuse, neglect, or dependency;

(c) that facts gathered by the division support the supported finding;

(d) that the person has the right to request:

(i) a copy of the report; and

(ii) an opportunity to challenge the supported finding by the division; and

(e) that failure to request an opportunity to challenge the supported finding within 30 days of receiving the notice will result in an unappealable supported finding of abuse, neglect, or dependency unless the person can show good cause for why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

(4) (a) A person may make a request to challenge a supported finding within 30 days of a notice being received under this section.

(b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

(5) (a) In an adjudicative proceeding held pursuant to this section, the division shall have the burden of proving, by a preponderance of the evidence, that abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred.

(b) Any party shall have the right of judicial review of final agency action, in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(c) Proceedings for judicial review of a final agency action under this section shall be closed to the public.

(d) The Judicial Council shall make rules that ensure the confidentiality of the proceedings described in Subsection (5)(c) and the records related to the proceedings.

(6) Except as otherwise provided in this chapter, an alleged perpetrator who, after receiving notice, fails to challenge a supported finding in accordance with this section:

- (a) may not further challenge the finding; and
- (b) shall have no right to:
 - (i) agency review of the finding;
 - (ii) an adjudicative hearing on the finding; or
 - (iii) judicial review of the finding.

(7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a request under Subsection (4) to challenge a supported finding if a court of competent jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which was also the subject of the supported finding.

(b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

(c) An adjudicative proceeding under Subsection (5) may be stayed during the time a judicial action on the same matter is pending.

(8) Pursuant to Section 78A-6-323, an adjudicative proceeding on a supported finding of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudicative proceeding on a supported finding of a severe type of child abuse or neglect.

Amended by Chapter 87, 2008 General Session
Amended by Chapter 299, 2008 General Session
Amended by Chapter 382, 2008 General Session